

IN THE COPYRIGHT TRIBUNAL

CT 122/13

**IN THE MATTER OF A REFERENCE BY PERFORMING RIGHT SOCIETY LIMITED
(APPLICANT) TO THE COPYRIGHT TRIBUNAL PURSUANT TO AN ORDER OF THE
TRIBUNAL DATED 7 OCTOBER 2013 IN RESPECT PRS TARIFF AMS (NOT-FOR-
PROFIT AMATEUR SPORTS CLUBS)**

Before: Jeffrey Manton, Sam Dawson, Colleen Keck

17 July 2017

ORDER

UPON the Applicant, in accordance with its obligations under an Order issued by the Tribunal on 7 October 2013 in relation to Tariff AMS, submitting to the Tribunal copies of feedback received by the Applicant on Tariff AMS since the date of its introduction, namely, 1 January 2014

AND UPON reading that feedback and the submissions of the Applicant, as set out in its letter of 12 April 2017 and the responses of the Applicant to questions posed by the Tribunal as set out in the Applicant's letter of 16 June 2017 and the Applicant's email of 6 July 2017

AND UPON the Tribunal also having considered the Applicant's letter of 18 May 2017 regarding the correction of certain legislative references in Tariff AMS

IT IS ORDERED THAT

- (1) The licensing scheme comprised in Tariff AMS shall be varied so that (i) its current terms shall cease to apply to premises operated by not-for profit-amateur sports clubs and (ii) the terms of an amended Tariff AMS as attached to this Order shall apply to premises operated by not-for profit amateur sports clubs.
- (2) The variation to Tariff AMS referred to in paragraph one of this Order shall take effect on the date of this Order.
- (3) Following its introduction in accordance with this Order Tariff AMS as attached to this Order shall apply until varied by a further order of the Tribunal.
- (4) This is without prejudice to any right to vary, or of any person to apply to vary, Tariff AMS in accordance with the Copyright Designs and Patents Act 1988 or the Rules of the Copyright Tribunal.

Reasons

1. The Applicant submitted the following evidence to the Tribunal, which the Tribunal found persuasive in favour of approving Tariff AMS in the form attached to this Order:

- Since the publication of Tariff AMS the Applicant has operated an email inbox specifically for feedback on Tariff AMS and the feedback mechanism has been advertised in the Tariff itself (the **AMS Feedback Mechanism**). In addition, in early 2017 the Applicant sent an express request for feedback to 4,174 licensees being all licensees to which Tariff AMS applied at that time.
- 27 licensees provided feedback. From this the Tribunal inferred that there is not strong opposition to Tariff AMS, or any great appetite to provide feedback. However the Tribunal is conscious that the low number of responses may also reflect a lack of resource available to amateur sports clubs that would impede their ability to provide feedback.
- Most of the feedback observed that the licence fees are too high, particularly where the only use of music is in relation to background music through one or more television sets, radios or other devices. This was particularly true of clubs who had a high number of members but many of whom were inactive or which were only open on a seasonal basis. However the Tribunal has concluded that the limits set out in Section 1.2 are reasonable limits for the playing of background music by a limitless number of devices of any type.
- Having regard to the explanation given by the Applicant in its email of 6 July 2017 the Tribunal recommended that the Applicant clarify in Tariff AMS that the fees set out in Section 1.2 apply regardless of the number or type of devices playing background music and the Applicant has amended the Tariff AMS in accordance with this recommendation.
- As Tariff AMS has now been in place for three years and very limited feedback on it has been provided by licensees, the Tribunal, at the Applicant's request, has determined that Tariff AMS should not be subject to another automatic review by the Tribunal. This is without prejudice to any right to vary, or of any person to apply to vary, Tariff AMS in accordance with the Copyright Designs and Patents Act 1988 or the Rules of the Copyright Tribunal.
- As there was very little use by licensees of the AMS Feedback Mechanism, and as the Applicant now has other processes in place for licensees to provide feedback pursuant to its Code of Conduct, the Tribunal has decided that the Applicant should no longer be required to operate a specific feedback system for Tariff AMS and may discontinue the AMS Feedback Mechanism.
- The Applicant brought to the Tribunal's attention certain incorrect legislative references in Tariff AMS. As there were no substantive effects arising from the incorrect legislative references the Tribunal has determined that the Tariff AMS should be amended to include the correct legislative references.



Colleen Keck, Chair
For and on behalf of the Tribunal

The Copyright Tribunal
The UK Intellectual Property Office
Newport NP10 8QQ

Tribiwnlys Hawlfraint
Swyddfa Eiddo Deallusol DG
CasnewyddNP10 8QQ



Not-for-profit amateur sports clubs

Developed by PRS for Music with the Sport and Recreation Alliance acting as the sector consultee.
(Includes rates introduced on 1st January 2017 following adjustment in accordance with section 3.)

Applies to: performance of copyright music* at premises owned/run by not-for-profit amateur sports clubs during the usual activities of the club.

The provision of facilities for, and participation in, eligible sport(s) must be the core main purpose of the club. The clubs must be organised on an amateur basis and all surplus funds must be reinvested in the club.

In establishing the qualification of a club PRS for Music will refer to the criteria as indicated in s.658 (1A) (b) and (c) Corporation Tax Act 2010 as those provisions were on 7 October 2013 and ignoring any amendments to those provisions which were made or brought into force after 7 October 2013, whether such amendments had prospective or retrospective effect.

The following are excluded from the tariff and charged using the appropriate PRS for Music tariff:

- performances at profit-making sports clubs;
- featured music* at events, or in facilities, run by a party other than the club OR where any profit or benefit does not go entirely to the club. This includes events chargeable under the scope of other PRS for Music tariffs including concerts, festivals, theatrical performances and dance parties. This exclusion does not extend to aerobic, keep fit and dancing classes for which appropriate charges are provided within this tariff.
- facilities such as gyms or leisure centres, in dedicated areas or buildings, open to individuals not associated with the club and/or operated commercially;
- any other commercial uses that could not reasonably be considered part of the club's activities;
- performances at any other premises.

1. Royalty rates

The rates apply to all royalties falling due from the effective date of this tariff and are shown **exclusive of VAT**. VAT is applicable at the relevant rate.

The **higher royalty rate** (standard plus 50%) is payable for the first year of the licence where the music user **has not** obtained PRS for Music's licence before musical performances commence.

1.1 Minimum royalty

The total calculated royalty for this tariff is subject to the following minima:

	Standard Rate
1.1.1 Annual licence , minimum per premises	£46.17
1.1.2 Permit licence (for an occasional performance), minimum per premises	£15.92

1.2 Background music (irrespective of device or number of devices e.g. TV, Radio, CD, MP3) in any part of the club premises

		Standard Rate	
1.2.1	Clubs <u>without</u> a social area*	£39.80	
1.2.2	Clubs <u>with</u> a social area* (whether or not background music is played in the social area)	Up to 75 members*	£39.80
		76 to 475 members*	£13.27 per 25 members* (or part thereof)
		476 members* or above	£265.30

The rate applicable in Section 1.2.2 shall be limited to £100.00 standard rate maximum in the first year of operation of this tariff (**January 2014 edition**) where the only use of background music is by a single radio or a single TV with a screen size less than 26 inches. This limit will increase to £150.00 in the **January 2015 edition** and £200.00 in the **January 2016 edition**, after which the limit will be removed

1.3 Featured music* (e.g. live music, disco, karaoke, film shows)

You may elect, at the start of the licence year for your featured music events within the scope of this tariff to be charged as a bundle (section 1.3.1) or individually (sections 1.3.2 and 1.3.3). This choice cannot be altered retrospectively for any period.

Bundled event charging option:

	Standard Rate
1.3.1 Unlimited events with featured music* within the scope of the tariff, includes featured film & video shows.	£19.70 per annum, per 25 members*

Individual event charging option:

	Standard Rate
1.3.2 Events with featured music* within the scope of the tariff (e.g. live music, disco, karaoke, music quizzes etc) where Section 1.3.1 has not been applied. Excludes featured film and video shows.	£1.19 per event, per 25 persons capacity* (or part thereof)
1.3.3 Featured film & video shows in a room or place being specially used for the primary purpose of film or video exhibition. Music provided by soundtrack or otherwise. Used when Section 1.3.1 has not been applied.	£0.58 per event, per 25 persons capacity* (or part thereof)

1.4 Aerobic, keep fit and dancing classes

	Standard Rate
1.4.1 for rooms/studios/pools with a capacity* up to 30 persons	£1.49 per session
1.4.2 for rooms/studios/pools with a capacity* over 30 persons	£1.86 per session

2. GENERAL CONDITIONS

This tariff is subject to *PRS for Music's* General Conditions Applicable to Tariffs and Licences, available on request.

3. INFLATION ADJUSTMENT

Every year on 1st January the monetary sums in this tariff will be adjusted for inflation. The adjustment formula will apply to the standard rates, using the mean (to the nearest whole percentage point) of the percentages by which the Retail Prices Index and Average Weekly Earnings Index (unadjusted) change in the year to the previous August.

The rate in section 1.4.2 will be calculated as the rate in section 1.4.1 plus 25%.

August is the latest month prior to the anniversary date for which figures are likely to be published for both indices.

After application of the royalty rates will be rounded to the nearest penny.

4. DEFINITIONS

- **background music** means music the performance of which is:
 - secondary to the provision of the ordinary benefits of the club; and
 - is not featured music.
- **capacity** shall be calculated as follows: where the accommodation of a room is limited to seating, the capacity will be calculated by reference to the total number of seats; but where, as in the case of discotheque performances, there is no formal means of calculating the accommodation of a room, that capacity will be assessed by reference to the maximum number of persons which can reasonably be accommodated in the room or which is permitted under any regulation by Fire Authorities or under the Club's Rules.

- **featured music** means music performed by:

- performers in person; or
- by any means which is performed as a prominent feature and/or characteristic part of an event or entertainment provided by or on behalf of the club, including but not limited to performances of music in the course of a discotheque, karaoke, music quiz or film show.

- **members** are calculated as the total number of registered adult and junior members (whether playing/non-playing members) of all not-for-profit amateur sports clubs run at the premises. For the avoidance of doubt, family memberships should include the total number of members considered within the family membership.

- **performances of copyright music** means performances of copyright music within *PRS for Music's* repertoire*

- **PRS for Music** is the trading name of the Performing Right Society Limited.

- **PRS for Music's repertoire** means all and any musical works (including any associated words), the right of public performance in which is controlled by *PRS for Music* or by any of the societies in other countries with which *PRS for Music* is affiliated.

- **social area** means an area which is used for people to congregate and socialise, with or without a bar and whether or not licensed to sell alcohol.

5. ELIGIBLE SPORTS

A copy of the list of eligible sports is available on our website or upon request.



Eligible Sports for Tariff AMS

Effective 1st January 2017

The following is a list of sports currently considered capable of eligibility for Tariff AMS, the PRS for Music tariff for not-for-profit amateur sports clubs, subject to meeting the requirements of the tariff.

Aikido	Fives	Octopush	Surf Life Saving
American Football	Flying	Orienteering	Surfing
Angling	Futsal	Parachuting	Swimming & Diving
Archery	Gaelic Football	Petanque	Table Tennis
Arm Wrestling	Gliding	Polo	Taekwondo
Artistic Skating (roller)	Golf	Polocross	Tang Soo Do
Association Football	Gymnastics	Power Boating	Tenpin Bowling
Athletics	Handball	Powerlifting	Trampolining
Australian Rules Football	Hang/Para Gliding	Puck Hockey (roller)	Triathlon
Badminton	Harness Racing	Quoits	Unihoc
Balloonng	Highland Games	Racketball	Volleyball
Baseball/Softball	Hockey	Rackets	Wakeboarding
Basketball	Horse Racing	Rafting(white/wild water)	Water Polo
Baton Twirling	Horse Riding	Raquetball	Water Skiing
Biathlon	Hovering	Rambling	Weightlifting
Bicycle Polo	Hurling	Real Tennis	Wind Surfing
Billiards and Snooker	Ice Hockey	Roller Hockey	Wrestling
Bobsleigh	Ice Skating	Roller Skating	
Boccia Bowls	Jet Skiing	Rounders	
Bowls	Ju Jitsu	Rowing	
Boxing	Judo	Rugby League	
Camogie	Karate	Rugby Union	
Canoeing	Kendo	Sailing	
Caving	Knee Boarding	Sand/Land Yachting	
Chinese Martial Arts	Korfball	Shooting	
Clay Pigeon Shooting	Lacrosse	Show jumping	
Cricket	Lawn Tennis	Skateboarding	
Croquet	Life Saving	Skiing	
Curling	Luge	Snowboarding	
Cycling	Model Aircraft Flying	Softball	
Disability Sport	Modern Pentathlon	Sombo	
Diving	Motor Cycling	Speedway	
Dragon Boat Racing	Motor Sports	Speed Skating (roller)	
Duathlon	Mountain Biking	Squash	
Equestrian	Mountaineering	Skater/Street Hockey	
Fencing	Netball	Sub-Aqua	

If a sport is not current represented in the listing, you may write to *PRS for Music* to request its consideration. Please write to:

Tariffs
Public Performance Sales
PRS for Music